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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/326,622 06/07/99 MOBLEY

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QM02/0516

EXAMINER

HOWARD N FLAXMAN
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SUITE 112
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GANEY, S

ART UNIT	PAPER NUMBER
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3752

DATE MAILED:

05/16/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/326,622

Applicant(s)
Mobley

Examiner
Steven J. Ganey

Group Art Unit
3752



☒ Responsive to communication(s) filed on Jun 7, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-17 is/are pending in the application.

Of the above, claim(s) 5-10 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-4 and 11-17 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892 ✓

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948 ✓

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-4 and 11-17, drawn to a method for applying air freshener within an automobile and an air freshener card, classified in class 239, subclass 6.
 - II. Claims 5-10, drawn to a method for preparing a plurality of air freshener cards, classified in class 53, subclass 431.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions Group II and Group I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make other and materially different products such as pads/cards in a container filled with a formulation for medicinal purposes or personal hygiene.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. During a telephone conversation with Howard Flaxman on May 11, 2000 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-4 and 11-17.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 5-10 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 4 and 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, line 3, "the liquid fragrance" lacks antecedent basis.

In claim 15, line 1, the phrase "each card" refers to more than one, however, in claim 1 only a single air freshener card is referred to. It is recommended that "each card" is changed to --the air freshener card--.

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Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Buck, Jr.

Buck, Jr. shows an air freshener type card 10/14 that can be located and placed in a hidden position within an automobile. See col. 1, line 21 thru col. 2, line 37.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buck, Jr. in view of Harrell et al.

Buck, Jr. discloses that an air freshener card can be placed in a hidden place in an automobile, except for the exact location under a front seat. Harrell et al discloses that an air freshener can be placed under the seat of an automobile. See col. 1, lines 19-25. It would have

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been obvious to one having ordinary skill in the art at the time the invention was made to position the air freshener card of Buck, Jr. under the seat, as taught by Harrell et al since such a place is substantially hidden and out of the way such that a person would not see the air freshener card since it is not designed to be attractively packaged. As to the location under the front seat of automobile, such a location is obvious since in a majority of automobiles, the only open location is under the front seat, since the rear seats are normally closed underneath to account for the rear trunk space or provide a barrier to automobile parts underneath the car.

As to claim 4, the apparatus of Buck, Jr. teaches impregnating a mass of material such as paper with perfume. A piece of cardboard is merely sheets of paper pasted together or pressed paper pulp and therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made, that the mass of paper material in Buck, Jr. can be considered a piece of cardboard or equivalent thereto and would merely be the substitution of one fragrance impregnating means with another fragrance impregnating means.

11. Claims 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn in view of Tararuj et al.

Glenn shows an air freshener card 14 made of 100 lb weight cardboard paper and impregnated with 0.32 ounces of perfume oil, except for the fragrance oil also containing hexylene glycol. Tararuj et al teaches the combination of a fragrance oil and hexylene glycol to impregnate a card means 12/14. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add hexylene glycol to the perfume oil of Glenn, since

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Tararuj et al teaches that hexylene glycol promotes the longevity of the fragrance which would be advantageous in the air freshener card of Glenn since the card would not have to be replaced as often.

As to claim 15, Glenn discloses 0.32 ounces of fragrance oil. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a formulation of approximately 0.26 ounces impregnating the card since, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

12. Claims 11-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn in view of Vlahakis et al.

Glenn shows an air freshener card 14 made of 100 lb weight cardboard paper and impregnated with 0.32 ounces of perfume oil, except for the card being impregnated with both fragrance oil and hexylene glycol in the claimed ranges. Vlahakis et al et al teaches the combination of approximately 70-85% fragrance oil and approximately 0.1-12 % hexylene glycol to form an air freshener formulation to be used with an air freshener means. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add hexylene glycol to the perfume oil of Glenn and impregnate the air freshener card with the formulation, since Vlahakis et al teaches that hexylene glycol aids in the stabilization of the evaporation of the composition which would be advantageous in the air freshener card of Glenn since the card would not have to be replaced as often.

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As to claims 12 and 16, the fragrance oil of Vlahakis et al is within the range as claimed. As to the hexylene glycol, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the range as claimed, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

As to claim 15, Glenn discloses 0.32 ounces of fragrance oil. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a formulation of approximately 0.26 ounces impregnating the card since, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Brown, Charbonneau and Barlow et al show air freshener devices comprising cardboard type cards. McGee et al and Santini teach the formulation of a fragrance oil and hexylene glycol. Langhorst shows cardboard cards that are impregnated with a formulation means in a container.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is (703) 308-2585. The examiner

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can normally be reached on Monday-Thursday from 8:00 AM to 5:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, A. Kashnikow, can be reached on (703) 308-1137. The fax phone number for this Group is (703) 305-3588.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

5/12/00
sjg

May 12, 2000

ANDRES KASHNIKOW
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700